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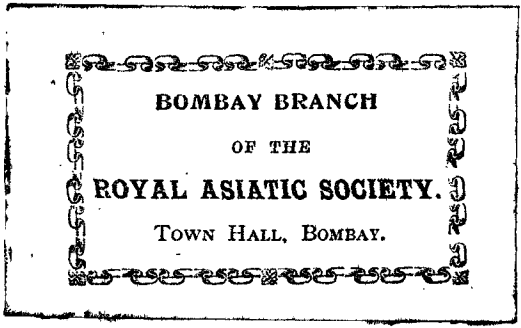

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Prooocool Chunder Mookerjee.

A MEMOIR.

BY

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MOHINDRONAUTH MOOKERJEE.

THIRD EDITION.

Printed Verbatim from the First Edition, with a Preface by the Author.

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Calcutta:

THACKER, SPINK AND CO.

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PREFACE.

THE second edition of the Life of Justice Onoocool Chunder Mookerjee is now before the public. The first edition of this humble and unassuming treatise was assailed on all sides by Native and European Papers when it was ushered before the public, so much so that I lost all hopes of seeing a second edition of it. The European newspapers, with heaps of faults to make them conspicuous, are always on the look out to pick holes in native productions with such a zeal that it sometimes leads them to a sad exposure. The Native newspapers, having no edifying subjects to occupy their paper with, fall to at whatever they find, and run up columns to save the necessity of finding out materials to give their paper a respectable

appearance. I do candidly admit, that I unfortunately threw myself open to some of the criticisms which I justly merited. But what struck me most was the cool way in which the authors of the "Hints on the Study of English," blind as to their own faults of as grievous a nature as I had been guilty of, sharply exposed my imperfections. I was not at all mindful, however, of Messrs. Webb and Rowe's criticisms, when in going through the book I discovered that both of them were not simply content in finding faults where they existed, but went the length of making reckless assumptions as *bonâ fide statements* which they conjointly said pleaders made use of, purely with the end of glorying in the correction of a native mistake. Nevertheless, the book, under the fostering care of the Calcutta University, has run through a second edition, and I confess my obligations to the authors of the "Hints on the Study of English" that their book has given me fair hopes

that unprofitable productions do not die out as they did before, and my humble production also may, after such bright example, hope to enjoy longevity. The Native newspapers of very very ordinary importance arbitrarily threw some of my expressions into Scotch, some into English, and some into Welsh dialect with a confidence about them which was sufficiently amazing. I do not expect to please either the Native or the European public by the narration of the life of such an ordinary individual as Justice Onoocool Chunder Mookerjee, but to avoid further attacks on the ground of scantiness of materials, I should here premise that Justice Onoocool Chunder Mookerjee had no presentiment that he was to be a great man, and therefore he did not keep any diary of his early life, the incidents of which, although likely to have been common with those of any other Hindoo, his subsequent position would have made interesting. Shut out thus from the great source

of gratification from which I would have rashly drawn, if it had been at all possible, I have been obliged to content myself with whatever materials I could glean, I am conscious that in its character of biography this humble treatise is conspicuously deficient, nor am I sanguine of its success, if at all, but to offer some tribute of respect to my deceased relative I have attempted it, and shall be content if it only answers that end.

Dedication.

To

THE HON. SIR RICHARD COUCH, KT.,
Chief Justice of the High Court of
Judicature at Fort William
in Bengal.

MY LORD,

THE love and admiration which the late lamented Hon'ble Onoocool Chunder Mookerjee owed to you, and the greatest esteem and highest respect which the defunct had for your Lordship, have made me bold enough in taking the liberty of giving the sanction of your Lordship's name to this little volume.

Although this production, with all its shortcomings and errors, cannot be a proper *tributum* to your Lordship, yet may I be permitted to

hope at the hand of a *Fidus Achates* of letters in your Lordship's person at least a favourable reception?

I have the honor to be,

My Lord,

Your Lordship's most obedient servant,

MOHINDRONAUTH MOOKERJEE.

Calcutta, 1*st June*, 1873.

THE

MEMOIR

OF THE

LATE HON'BLE JUSTICE

ONOOCOOL CHUNDER MOOKERJEE.

LET me hold my *Penna* after a few months, to write the memoir of the individual abovenamed: but *quid agis?* if any one put me such a query, I will be utterly thrown into a great jeopardy and hurley-burley, and say—a fool of myself! As a spider spins web for its own destruction, or as when the clown who was busy in digging a grave for "Ophelia," was asked by Hamlet—"Whose grave's this, Sirrah?" said, "Mine, Sir," so in writing one's memoir I am as if to dig my own grave in it.

To write one's memoir, or to write in such a

way as the literary public may fall in love with, is a task difficult in the extreme, especially of such a man as the late Hon'ble Justice Mookerjee. He was no poet, that I may put some such writing in print full of poetical thoughts which the public did not see, or recite some such stirring events as induced him to write into measured lines some such subjects, which the public are already in possession of, and thereby please them: he was no generalissimo that I may recount the sundry dangers into which he fell, and of which he got rid, or to which he fell a victim; or that he was besieged in some place and gloriously got a victory. Therefore my reader may expect nothing of extraordinary interest from me, by which I can please him;—"Ay there's the rub;" and it is for this reason that I tremble with fear to appear before the tribunal of public opinion, (having very little to entertain them with,) like a guilty person before a Bench of Justice, who has nothing to say in

vindication of his innocence and expects every moment a judgment inflicting a severe penalty. In this memoir will be found some incidents of his life with their dates and what they resulted into, and which more or less generally come athwart the path of almost every individual, as he acts on the varied scenes of the drama of human existence; and how a single private individual, unaided by any, by dint of nude energy and perseverance erected a vantage ground above the common level of his countrymen, nay stood with the rare, barring few on the same level with him, and sat arrayed in majestic glory, viewing with unparalleled and mute rapture his friends and admirers lifting up their hands with heartfelt glee and laudation for his success in life. All that I can say in recommendation of this unpretending volume is, that my reader will find this a *faithful* memoir of Justice Mookerjee with as many letters from some respectable public individuals as I shall think will be of

any interest to my reader: I shall not omit to insert at least one important decision delivered by him, when he held the honorable position of a Judge of the High Court; nay everything will be found in it which a reader of sense may expect from the writer of these pages of no high literary pretensions—a *nephew* of the late lamented deceased, and from the memoir of such an individual as the late Hon'ble Justice Onoocool Chunder Mookerjee.

He was born of a respectable family of Coolin Brahmins of the first class. His grandfather, Dewan Boiddo Nath Mookerjee, was an inhabitant of Vangamora Goopinauthpore in the district of Hooghly, who came to Calcutta and settled himself there with his family. His father Baboo Lucky Narain Mookerjee was a very respectable gentleman to whose indefatigable exertions the late Hindoo College was in some degree indebted for its foundation, and of which he was for some time a secretary.

He was born on the night of Saturday, the 29th of Choit, 1236 B.S., corresponding with the year 1829 A.D. The exact time of his birth was carefully noted down and submitted to an astrologer for drawing out a life-chart or horoscope. The people of this country have so great a faith in the doctrines of astrology that there is perhaps not a Bengalee without a horoscope, which is valued chiefly for the prophecies it makes. I do not know how much truth there may be in Hindoo astrology; but it may not be altogether uninteresting to the reader to know that the astrologer, who prepared the horoscope of Justice Mookerjee, declared that he would in time become a king and rule over the destinies of hundreds and thousands. Predictions like this are a little too numerous, although the number of crowns in the world seems to be well-nigh stereotyped; and their great secret probably lies in the desire to get handsome perquisites. But I will make ample

apology to Mr. Astrologer if he can prove that I have underrated his capabilities.

At a very early age he was placed by his father under the tuition of a Moonshi, who began to teach him Persian. The study of the Persian language was then so much in vogue that none who did not possess some knowledge of it could be deemed well-educated; and it was the *bonton* to carry that study much beyond the point which would have sufficed for the purpose of business or official intercourse. Within a couple of days the young learner mastered the Persian alphabet from *Alif* to *Ya*, and within a couple of days more performed the feat—difficult enough to an infant of five or six—of tracing with accuracy the characters which compose that alphabet. This was not a little amazing to his *Moulovee*, senile as he was and grown grey in the profession of a tutor, who said it was to him quite a wonderment, wrought by a little mechanism of flesh and blood. Onoo-

cool Chunder went on with diligent application, and within a month finished the rudiments of the Persian language. He next took up grammar, a major portion of which he understood and got by heart within a very short time. And in the course of two years from the inchoation of his Persian education, he was able to read such books as *Alif lyala Fasana-Ajahib, Galbasanaoor, Hatemtaie, Bagabahar, Golistan, &c., &c.* Simultaneously with Persian he learnt a little of Sanscrit.

He commenced his English education in the school of Gobindo Bysack, at the age of eight. Having read there for two years, he joined the Hindoo College. The pace at which he went on in this latter institution was not of an extraordinary kind, nor did he give any indication of the success which attended him in after-life. He held only a tolerable standing in his class, but was regular in his attendance and assiduous in his studies. He was of an inquisitive turn

of mind; but the low and oftentimes tremulous voice in which he spoke whenever he had any question to put to his master, showed that in him shyness and timidity had the better of curiosity. His comprehension was clear as noon day, and his memory retentive; but that retiring modesty which characterized him so peculiarly throughout his life prevented him from using any of those wicked but pleasing tactics by which boys of less solid parts than young Mookerjee seemed to possess, delude the simple schoolmaster into extravagant beliefs regarding their merits and future prospects. The way in which young Mookerjee used to prepare his prescribed College lessons, at home, might be best explained in a few lines. "I have seen," says one of his college fellows, "that he would generally sit at home for one hour every morning, and would finish with success whatever might have been his lessons which at times I could not finish in a few

hours, labouring generally from sunset to 9 o'clock P.M., and then from sunrise to 8 o'clock A.M." Shall I not therefore be justified to say on the strength of the *supra* statement, that it was undoubtedly a sign of becoming great, and that little Mookerjee was a genius undoubtedly, though he did not show anything supernatural in his college life? But although young Mookerjee did not distinguish himself much as a student, he was well-known in his college for a gentle disposition and inoffensiveness in his dealings with others, which rendered him such an agreeable member of society in after-life. I have heard from a gentleman who was one of his form-fellows that little Mookerjee never had a snip-snap with any of his college boys, and was indeed of so forbearing a disposition that he would not even notice what impulsive natures would have signally retaliated as an insult. But there was one peculiarity in young Mookerjee which, I think,

does not speak much in his favour. It is said that he never joined his class-mates in any kind of conviviality, and was often seen sitting still on the bench when all the other boys were engaged in healthy or stimulating diversions. The absence of a playful disposition in boyhood is a defect of an unsightly nature; and as I cannot approve of the wisdom of those biographers who construe all such absence into an indication of a great philosophic mind that is to be, I must pass judgment against little Mookerjee for his unplayful disposition. And well did he pay for it. It is well known that boys cannot bear the sight of any one of them sitting still or busy with his books when they themselves are to jump over the moon; and it accordingly happened that little Mookerjee, whilst sitting quietly in his class-room, was often assailed by gangs of boys and ruthlessly clapped and slapped out of his seat, his books snatched out of his hand and his papers

scattered on the floor. But this singular sheepishness—so ungraceful in a boy—endeared little Mookerjee to all his teachers, for the schoolmaster, it is well known, notwithstanding his rod and ferule, is no match for the naughty boy, who haunts his mind in a terrific form at all times, and in the most terrific form of all when he is on his way home from school. Little Mookerjee, however, was not without that curiosity which leads many a boy in Calcutta to play the truant at school, and stories are told of many gangs of urchins absenting themselves from school in order to see the Asiatic Museum at Park Street, the Ochterlony Monument on the Maidan or the Fort. An anecdote is related in connection with these excursions which I think worthy to be jotted down here as proving most conclusively that the progress made by little Mookerjee at school, though not very gairish, was nevertheless of a most solid character. Once

when the Hindoo College was about to be closed for the winter vacation, little Mookerjee with some of his brothers and cousins went to see the Monument. When he had ascended a few steps, he received a severe blow on his head, which rendered him impercipient for a few moments. He was then brought out with great difficulty by his companions. A few seconds after this, a Cyclopean English sailor came out of the Monument; and little Mookerjee asked him in a gentle voice why he had treated him thus. He answered that he took him to be a dog and not a man, but now when he saw that he was a man but a *niggar* at the same time, he might as well retain his first impression, as a *niggar* was no better than a dog. The reply stung little Mookerjee to the quick, and he addressed his rude assailant for more than an hour, dwelling chiefly upon the principles of Christianity and enlarging on the duty of regarding all men as fellow-brethren

without distinction of creed or colour. The words of Onoocool Chunder had a marvellous effect. The savage heart of the sailor was moved, and he went away making an apology for what he had done.

Justice Onoocool Chunder obtained a Senior Scholarship in his College, and would have continued his studies a few years more. But the chapter of accidents to which his family then found themselves reduced, stood between him and the desire to obtain further distinctions as a student. His father died when he was very young, and the large estate, which he had bequeathed to his children, was gradually squandered away by his eldest brother in unfortunate blind bargains and speculations. The family was threatened with Barmecide feast. The amount which Onoocool Chunder received every month as scholarship was very small, being far short of what was needed to maintain the family. Onoocool Chunder was thus

compelled to look out for an employment at a very tender age. His life had hitherto glided on smoothly like an undisturbed rill, but now when he found its current disturbed by many grave thoughts and anxious cares, he must have felt himself a most miserable creature indeed. And the sense of this misery was certainly aggravated by the painful sacrifice he had to make of his ardent passion for study.

There are innumerable examples of children possessed of competent means for education remaining beetle-headed for ever, or having continued it for some time, refraining from it: and such instances are not to be deplored, for they are as if doomed. But an instance where we see that one through sheer want of means swerves from the path of a college-education which may have likely terminated brightly and gloriously, as in the case of the Hon'ble Mookerjee, cannot but fill our eyes with tears and render our hearts full of sorrow. His education was

not imperfect, nor of an ordinary nature, but what is optable in every enlightened age—in every enlightened country—and what every enlightened father or mother wishes for his or her child. It was not the education of the Calcutta University, but it was the education of the Gothic old Hindoo College which he received, whose *alumni*, like so many stars, shone, and shine with unparalleled effulgence in the English Literary sky of India!

But Onoocool Chunder's heart-felt anguish at being compelled to give up study at a time when he was beginning to value it for its own sake, could not be of long continuance. When the mind is filled with anxiety for the barest necessaries of life, it forgets even the profoundest griefs and the most hearty regrets. Onoocool Chunder was moreover pressed by his mother to search for an employment, and the anxiety which she evinced for the maintenance of the family was a thing too serious to allow of his

cherishing any longer further desire to win honours and distinctions as an *alumnus*. "All love the womb that their first beings bred," and Justice Mookerjee was not out of the pale of it. He knew it perfectly, how much trouble a mother undergoes for her child. When it is within her womb, there cannot be a greater degree of human pains than she endures, and not for an hour or for a day, but for ten months usually speaking: and there cannot be a greater instance of self-denial than what she endures then, nay during the whole existence of her offspring. Nothing in the world can make her facetious when her child is not so, and nothing in the world can make her lugubrious when her child is not so—in fact all her worldly comforts and miseries are as if echoes of those of her child. Distressed in distress and pleased in pleasure, there can be no human being so sympathizing as the mother! *Ergo*, on the contrary, a mother is loved and respected in every age—in every

realm—by every nation—and by everybody who can understand what transcendent and peerless wealth she is! The late Hon'ble Mookerjee could no longer sit at home without making an effort for securing a post, when his mother commenced to urge him every day that he should do it. Onoocool Chunder saw that an effort was necessary, and an effort he did make. But there was one consideration which greatly hampered his movements, and that was how could he—the scion of a highly respectable family—go mendicant for a contemptible post worth no more than Rs. 20 or 30 a month? Family pride, however mischievous in certain cases, is strictly natural and supremely necessary; and young Onoocool Chunder had reason to be proud of his father and grandfather. Although, therefore, he began at this time to leave his house every day after breakfast, and saw his friends at their offices, he could not induce himself to declare openly what he wanted.

Many months thus passed away in fruitless endeavours — months of excruciating agony, to Onoocool Chunder and his family—till one day as he was sitting immersed in care and distressing thoughts, information was given to him that the post of Nazir in the Court of the Magistrate of Howrah had become vacant. Justice Mookerjee was almost transported with joy to hear this; and it is superfluous to say that he immediately applied for the post. The candidates, who were altogether 30 in number, were subjected to a competitive examination, which resulted in the arbitrament and appointment of Onoocool Chunder.

Mr. Edward Jenkins was the Magistrate of Howrah when Onoocool Chunder got the Nazirship. He was succeeded by Mr. J. J. Grey, who, in his turn, made room for Mr. H. L. Dampier, now a Member to the Board of the Government of Bengal. All these three officers were highly satisfied with Onoocool Chunder,

and each, as he left the magistracy, gave him a certificate testifying to the excellence of his character and his *cui bono* in the post he held. But pecuniary difficulties now began to thicken round him, and he gave up the Nazirship which brought him a very trifling income, after having held it for more than five years.

A year before he left the Nazirship, Onoocool Chunder had been introduced by his eldest brother Baboo Hurrish Chunder Mookerjee to Mr. Abercromby Dick, then one of the Judges of the late Sudder Dewanny Adawlut. Mr. Dick was on terms of something like intimacy with Baboo Hurrish Chunder, and knew the Mookerjee family of Pathuriaghutta as one of the most respectable in Calcutta. He therefore felt himself planet-struck when Hurrish Chunder, after making mention of the Howrah Nazirship, requested him to provide Onoocool Chunder with a better employment. With an expression of sympathy and a paternal solicitude

rarely evinced by Englishmen in these days, Mr. Dick vituperated Hurrish Chunder for allowing Onoocool Chunder to take so execrable an employment as a Nazirship, and advised him to nurture his brother for the Bar. There is in the lives of most men a particular event—apparently small and unimportant—which gives birth, as it were, to the careers which they perform on earth, or determines at any rate the particular direction which they take. Such an event in the life of Justice Onoocool Chunder was his interview with Mr. Dick, for it is more than doubtful whether he would have been the distinguished Judge and Advocate he lived to be but for the advice which he received from that gentleman.

From the date of this interview, Onoocool Chunder began to study law, for none can be great *Impromptu!* The time at his disposal was small, for he had to work at his post at the Howrah Magistracy throughout the day.

All he could do, therefore, was to make the best of his mornings and evenings ; and as the home he lived in had now become the dwelling place of Distress and Anxiety, it is easy to imagine that even his mornings and evenings could not have been of a very tranquil character. But his determination surmounted every difficulty, for *omnia vincit labor*, and he carried on his study of law with an energy and perseverance which are yet very rare amongst our educated countrymen. In 1855, he appeared at the law examination as one of 500 candidates, and came off flushed with success. He was second in the list of the triumphant candidates—*a glorious result certainly!* With him passed Baboo Ashootosh Chatterjee, and Baboo Peary Lall Banerjee of Otoreparah, the late Sub-Judge of Midnapore.

In the same year, 1855, Justice Onoocool Chunder joined the Bar of the Sudder Court. It is impossible to describe the oblectation with

which he contemplated this change in his position, and it is certainly harder still to give the reader an idea of the force and fervour of that spirit of thankfulness which now filled his heart in favour of Mr. Dick. Almost from the day he joined the Bar, Onoocool Chunder began to get briefs—one, two, three every day—and in four or five years his income amounted to 800 or 1,000 per month. Acting conjointly with Baboo Ashootosh Chatterjee, the young Advocate rose slowly but surely—never dazzling anybody but inspiring all with whom he came in contact, with the fullest confidence in his character and professional puissance and competency. Baboo Roma Prosad Roy was then the leader of the Native Bar, and Justice Onoocool Chunder soon attracted his notice. Senior Pleaders in those days used to encourage desert in the junior members of the Bar by associating the latter with them in some of their cases. It may be that their object in

doing so was not quite of a benevolent nature, though we have no proof that that object was of a selfish kind. But whatever the intention which led the senior Vakeel to join with him the junior may have been, the result of the practice it gave rise to, was in the highest degree advantageous to the Bar in general. However astounding it may seem to unprofessional men, but it is nevertheless a fact that success in the Bar stands in as good need of "patronage" and "interest" as success outside of it. And it may, I think, be safely affirmed that some of our most distinguished lawyers were in a greater or less degree the product of the system of patronage which must have benefited the late Justice in no ordinary *quantum* in the early part of his career as a Vakeel.

It is a pity that this system is so little acted upon at present. The patronage which was extended towards him by Baboo Roma Prosad Roy enabled Onoocool Chunder to tug at the

oar of his profession. It was thus that Onoocool Chunder soon gained the plerophory of the Mooktears, and was able to take cases on his own responsibility. This was a foundation safe and solid enough to support a career.

Onoocool Chunder made an excellent use of the money he now earned as a Vakeel of the Sudder Court. His first business, on making an income, was to extricate his family from the difficulties in which it had been lately enwraped, and to restore happiness and sunshine to those sweet and well-beloved faces on which he had not seen the soft and fascinating beams of a simper for many a grim-visaged year. With what remained after performing this work of love and duty, Onoocool Chunder went on for some years purchasing law books of all kinds—Reports, Digests, Commentaries, &c. These he made good use of, thinking, unlike most young men of our time, that the necessity for study does not cease when a man begins to earn

money. At this time Onoocool Chunder's study embraced the deep and awful hour of midnight, the weary hour which precedes and the light and refreshing hour which succeeds it. The day was spent at Court; and a genial, buxom and ardently sociable nature consecrated the first hours of evening to Friendship and Society.

The amount of business which the Sudder Dewanny Adawlut had then to do was very large, and the Judges who presided over it were comparatively few in number. The consequence of this was, that there used to be very great delay in the disposal of cases—a case generally remaining on the file for four or five years. To remedy this evil the High Court with its strong battalion of Judges was established in 1862. At this time the Court language was changed from Urdu into English—a change which greatly affected the extensive practice which had been secured—and secured most deservedly—by the late Baboo Kishen

Kishore Ghose and by Munshi Amir Ali Khan Bahadoor. At this time, too, died Baboo Roma Prosad Roy, and his death, occurring as it did at a moment when he was nominated for the Bench, grieved all Bengal, and grieved in particular Onoocool Chunder Mookerjee who held in grateful remembrance the invaluable assistance he had received from the deceased. And at this time too Baboo Shambhoo Nauth Pundit left the Bar in order to take his seat on the Bench. All these circumstances combined to throw open a large amount of business for general competition, and the persons who won consummate success on this occasion were Onoocool Chunder Mookerjee, Hon'ble Dwarka Nauth Mitter, and Baboo Aunnoda Prosad Banerjee.

Justice Onoocool Chunder was now a rich man, and his *éclat* as one of the ablest members of the Native Bar was firmly established. But success worked no unseemly change in the man. Onoocool Chunder was now the same

modest, unpretending, retiring being, the same loving and affable spirit, the same jovial and open-hearted member of society that he had been in his obscurer days. Wealth rather served to bring into full play qualities of heart which poverty had either wholly or partially kept snug. For, when the means of enjoyment were placed within his reach, Onoocool Chunder displayed a generosity of nature and a fulness of the spirit of social love which charmed every heart that felt their influence. Nor did success change the nature of Onoocool as a student of law. He continued to study law with unabated zeal in the deep and silent hour of midnight when no inquisitive eye could be directed towards him. And many marvelled how he who, out of Court, seemed to be but the gay butterfly of society, could maintain the high position he had acquired at the Bar; but I repeat it again that none can be great—*Impromptu!*

The year 1864 might be taken to be the time when Onoocool Chunder's name as a first-class Pleader took a strong footing. In that year, his income amounted to Rs. 48,112. It was still larger in the years which followed.

Tempus edax rerum, and on Sunday, the 5th of June 1864, Judge Onoocool Chunder's mother "shuffled off this mortal coil." The event grieved him more than any other of a like nature which occurred during his lifetime. His father had died when he was of a very tender age, and consequently he did not know until now what a trial it is to lose a parent. For two days after his mother's death, Justice Mookerjee refused to be consoled—refused the imperative calls of hunger and thirst, or rather felt neither the one nor the other. Himself being a firm believer in Hindooism and entertaining a profound respect for the faith of the dear benefactress he had lost, Onoocool Chunder celebrated his mother's *shrad* with an

ungrudging heart. He spent about twenty thousand rupees to commemorate the memory of his mother.

On Tuesday, the 6th of June 1867, Justice Pundit went to his last home, and in the month of July in the same year, the Hon'ble Mitter Dwarka Nauth was raised to the Bench. This last event greatly enlarged the practice of Justice Mookerjee, who now became the generalissimo of the Native Bar. Onoocool Chunder's income in the month of July 1867 amounted to Rs. 7,970.

On Wednesday, the 12th of February 1868, Justice Onoocool Chunder received a letter from the Home Government appointing him a Fellow of the University of Calcutta; and on Saturday, the 29th of the same month, he was informed by the Registrar of the University, that the Syndicate had elected him a member of the "Faculty of Law." As a member of the University he did his duty well.

On the 24th of December 1868, Justice Onoocool Chunder was appointed Junior Government Pleader.

It was all along the policy of a client, since the formation of the High Court, to retain a Pleader as well as a Barrister on the same side with an *animus* that a Pleader will be better able to understand his case than a Barrister, whom he will be able to explain the nature of the case; while a Barrister being a European will be better able to argue with liberty with a Judge than a Pleader, in consequence of his being of the same colour, religion, &c., &c., and thereby a client had a perfect hope of success: but if otherwise, he would not. And this state of thing went on for a long time!—On one side while a Barrister argued a case first, a Pleader next, or it was the reverse. There was no such thing as a *pre-audience*, until the question was raised by the Hon'ble Mookerjee; who, being once retained in a case on the same

side with Mr. Mone Mohone Ghose, attempted to argue the case first being his senior, and being confident of his own ability in legal lore; Mr. Ghose was fresh from England, and Justice Mookerjee feared that if Mr. Ghose opens the case first, he might play the deuce with it, and that would go very much against his client; but on the other hand, Mr. Ghose made a resolution to plead first, saying that he was a Barrister, and he should undoubtedly get a pre-audience to a Pleader. But Justice Onoocool Chunder was not a man to be easily daunted from his resolution when it was an important matter that seemed not only to affect the case of his client, but his own respect and ability before his client, and of all the Senior Pleaders. Therefore on Friday, the 12th of March 1869, he argued this question, with capacious, strong and laudable ratiocination and eloquence before the Justices Bayley and Phear and the Chief Justice; but it proved to

be the labour of Sisyphus, for they gave decision in favour of the Barristers. Justice Mookerjee was now stung to the quick for the first time of his life, and returned to his chamber malcontent. On the next day he received a letter from the Chief Justice (Sir Barnes Peacock), asking him to become Advocate of the High Court. He thought that if he accepted the offer, he being senior to many Barristers, would have the pre-audience to many, but on the other hand, he would thereby leave to go to wreck his hope of becoming a Judge (which he had in view), and would also leave his brother-Pleaders to opprobrium. Accordingly he held a meeting of the Pleaders in the Bar-Library for determining whether he should accept the offer. After a heated discussion all the Pleaders *una voce* said, "no!" And the Hon'ble Mookerjee did nill the offer politely. He now, in consultation with his senior brother-Pleaders, resolved not to take any

case on the same side with a Barrister, and consequently during his incumbency as a Pleader, the junior Barristers who were generally retained with senior Pleaders, were almost briefless in the Appellate Side of the High Court—for no client would *solely* rely on their *cui bono*.

On Tuesday, the 15th of April 1869, his brother Baboo Hurrish Chunder Mookerjee died suddenly of apoplexy; he was the first-born of his father, and now Hon'ble Mookerjee was once again thrown into the peck of troubles.

I have seen Justice Mookerjee for the last six years of his life falling sick of fever, or some other kind of ailment for five, six, or ten days every month, and in consequence absenting himself from the Court. Again on July 1869, he was on the sick list. He was attacked with a doloriferous boil which was operated by Dr. Nilmadhub Mookerjee (his family Doctor and kith and kin) on Thursday, the 20th of July:

his boil was not healed up until Saturday, the 28th; this day at 6 P.M. he felt himself feverish—which, day by day, augmented and terminated in high fever. On Thursday, the 2nd of September, his life was much in danger (as it was theorized by his family Doctor), and on Saturday the 4th, Dr. Fayrer was called in for consultation, and the Hon'ble Justice recovered at last on Tuesday, the 21st of September. On the 22nd, he departed on a boat accompanied by some of his friends and Dr. Behary Lall Vadoory on a river trip, and came back on the 28th; he started again on the 30th and came back again on the 4th of October. Then he went on a peregrination for a change on the 11th to the N. W. P., and returned back on Monday the 15th. He was now told by Dr. Payne to make no scruple to leave his house at Pathuriaghutta, and to take up an abode in some better place for the security of his health. He was then desired by Dr. Payne to take up

a house at Chowronghee, which he did on the 12th of November, where he remained with his family and felt himself much emendatory in his health.

So long the Hon'ble Mookerjee was the Junior Government Pleader, and Baboo Juggoda Nund Mookerjee was officiating in the place of Baboo Kissen Kishore Ghose; in the meantime unfortunately Mr. Ghose died, and the Hon'ble Mookerjee, who was only an officiating incumbent in the place of Baboo Juggoda Nund, received a letter on Monday, the 21st day of February 1870, at 2 P.M., wherein he was appointed a Senior Government Pleader.

On Thursday, the 10th of the next month, Mr. Rivers Thompson wrote him a letter, asking him earnestly whether he should like to take a place in the Council of the Lieutenant-Governor of Bengal, which he accepted in a letter written to him on the next day; and the Lieutenant-Governor having read the same,

wrote him another on Saturday, the 19th, offering him a seat in the Legislative Council of Bengal. This was the first time (and in the case of the Hon'ble Mookerjee) that we see a Pleader of the High Court taking a seat in the Bengal Legislative Council, solely by the dint of his own legal weapon and he was an *au fait*, and therefore undoubtedly a transcendental lucre to the Council. It was all along the case, and it is so up to this time with the Lieutenant-Governors, to give seats to non-professional men (who are or were as if cocks of the roost, or in other words, Natives of high social status) in the Council, who for the most part had no legal knowledge to argue on an important or any kind of bill whatever judiciously, but who are or were merely cyphers and ditto-saying members with a few honourable exceptions. But the selection in Justice Mookerjee was most judicious and tip-top. During his incumbency in the Council, no bill he allowed to be passed

until he understood every clause of it to be judicious, and discussed it properly in the Council with liberty and reasoning—which are truly required in such and other things of the like, which will rule over a large number of people. During the time he did tarry in the Bengal Legislative Council, for about eight months, the following Bills were passed in his presence :—"The Wharf Bill," "Chowkydaree Chakran Bill," "Court of Wards Bill," "Dacca Bill," and "Port Bill."

On Tuesday, the 29th of November 1870, the Secretary to the Viceroy and Governor-General of India wrote a letter offering him a seat on the Bench of the High Court, which the Hon'ble Justice Mookerjee accepted in a letter in reply to it, and consequently he abdicated his seat in the Bengal Council on the 1st of December.

Here terminated the career of the Hon'ble Justice Onoocool Chunder Mookerjee as a

Pleader gloriously to himself and to his brother-Pleaders. The long chain of fifteen years which he devoted to this profession, was made by him most strong at every link, and by clinging to which he rose step by step to the *ne plus ultra* of fame and distinction to the amazedness of the public at large and men of his profession.

He got his appointment and was sworn on Tuesday, the 6th of December 1870, but did not sit on the Bench that day: it was on the next day, the 7th, that he took his seat on the Bench of the High Court, with Justice E. Jackson. This was a *desideratum* to him. The hope which he so long hatched at last yielded him what he hankered after, and in seven league boots, "True hope is swift and flies with swallows' wings,"—and he might have justly said—*Veni, vidi, vici!* The law-study to which he had devoted so long his midnight hours, with indefatigable ardour and the zeal of a mar-

tyr, yielded him fruits most sacchariferous and wished for—*position*, *respect*, and *wealth*.

Since he joined the Native Bar down *ad finem* of his career as a Pleader, he had one and uniform way of pleading. He made no gairish of words, never made his sentences long, when he could express his thoughts in small ones. He never made his sentences periphrastic when he could do it in an easy way. He was an eloquent speaker, but made no raree-show of it. Never he counterchanged strong words with the Pleaders or Barristers of the other party. In defeating or conducting a case, his temper was never incalescent and hazy. He well understood the interest of his client, and never ceased to *tussle* for it until he was flushed with success, or until the shafts of his arguments made his quiver void. He was never seen to illude or trespass upon the time of the Court with fiddle-faddle arguments, to prove his wits going a-wool-gathering, but what he said was

nude truth, based upon *jus civile, lex non scripta, lex scripta*, &c., and relative to his case and in homogenity to the subject-matter he discussed, and always true to the points he argued. He made no quotation having no bearing whatever to his case, but cited some such Acts, Clauses and Precedents that have a direct affinity to his case, or the subject-matter of his argument. By-the-bye, I should not here omit to mention that he had one peculiarity in his pleading which I have observed very minutely. Having first expounded before the Court the anatomy of his case, he then launched out on the relative position of his client with that of the other, pointing out the *quiproquo* or bolstering up the decision of the Lower Court with his sapience and legal acumen and cognoscence, waiting with quietude to see which side the Court takes in favourable consideration, knuckling to the arguments of the Court and then inducing it gradually to his favour, giving thereby no

offence to the Court. Justice Mookerjee very well understood the boot of his client, for which he would carry a logomachy as if his wheel of fortune depended upon it, or even more than that. He was seen sometimes to argue a case continually for many a day, which more than amply indemnified the remuneration given to him; for this reason he was the only wished-for Pleader or the magnet for the last five years of his stay in the Native Bar of the High Court. He understood money very well, and at the same time he knew how to bring grist to the mill. Means,—proper means he did make use of to fill his coffers. When one party has given him fees, he never, by returning the same (which he could have done), took fees from the other side, however infinitesimal the one might have been in comparison with the other. An unparagoned gentleman he was, and his word he thought was more valuable than a bond on any paper or anything whatever that could be

depended upon on the ground of its own validity. And far from giving a word or taking a retainer from another party, he promised his attendance to the party whose papers he happened first to see. In the High Court there are many Benches, and there is no certitude as to what time and before what Bench a Pleader shall be called to appear, and it is simply for this reason that not less than two Pleaders are retained by a party in a legal polemics. On multitudinous occasions when the hope and affiance of the clients of Justice Mookerjee *toto cœlo* suspended on his pleading, and he was absent from the Court on account of some sickishness, he even on such days came and pleaded their causes when they importuned him to do so.

Of all the learned walks of life, that of a Pleader or a Barrister is the most difficult to win laurels in. A Doctor with his badge and his braggardism for profoundity in Pathology,

Ætiology, Nosology, Materia Medica, Regimen, Chirurgery, Surgery, Toxicology, Chemistry, Alchymy, Zoology, Zoography, Anatomy, Comparative Anatomy, Comparative Physiology, or any *logy* that exists in the category of Science (but I should never finish this memoir, and you would feel yourself worried, if I were to attempt to tell you all of them, it will be *quantum sufficit* to say that boldly) can give cremation, sepulture, &c., to as many number of men as he likes, and at the same time can fill his coffer—a Civil Servant is as sure of getting his desired object as soon as he passes his examination—and *pseudo* is the Engineer: but the *status* of a Pleader or a Barrister is quite the antipodes. A Pleader is allowed to join Bar after his final examination or a Barrister after he has given his prescribed number of dinners, but where is his profession?—his profession lies at the arbitrament and countenance of *fœx populi*, and, generally speaking,

here at Calcutta at the hands of some ignoramuses, who have not the calibre to understand the acquirements of a Pleader or a Barrister, I mean—Mooktears. And even how should those acquirements be brought into trial?—by giving him cases: but what Mooktear should volunteer to allow him to send up a pilot balloon? And take it for granted, if at the persuasion of a tried Pleader, a Mooktear gives him a case, and if unfortunately he loses it, he is at a discount, or fortunately if he wins it, he is *valeat quantùm valere potest*, as the Mooktear thinks: and lack-a-daisy!—a Mooktear has so much to do with such a profession! But in *additum* to this there are other Gordian knots—such as if he is an obtuse, and has an inaudible *voce*, a blunt memory, a beetle-head, or if he is hot-headed, a stuttering speaker, and irrespective of other things that mainly and importantly stand in requisition to constitute one as veritable Advo-

cate in the accurate sense of the expression. Very few individuals get cases the very month they join Bar, and almost every one has to wait pretty long for them. Thus many, who live from hand to mouth and have not sufficient patience and imperturbation in them, leave the Bar and take up employment somewhere else. Here in such a difficult profession the Hon'ble Mookerjee did shine and to such an extent, that he at one time stood the first Pleader in the Native Bar of the High Court and on the culminating point of blushing honours, and not only that, his high legal ability and acquirements went so much in the judgment of the highest and unrivalled functionary in India, that he was at last raised to the Bench of the High Court, the highest tribunal in India. His elevation created a catholic ravishment throughout the domina under the benign and fostering sceptre of great Albian. His friends —(for persons were sure to be his friend with

whom he had talked for a few moments), hailed this budget of news with heart-felt and infinite joy, which is very clearly and distinctly visible in a few congratulatory letters which they wrote him on the occasion and which I am in possession of; and I think they will not be uninteresting to my reader were I to insert them here.

1.

142, *Gresham House,*
Old Broad Street, E.C.
London, January 13th, 1871.

THE HON'BLE JUSTICE ONOOCOOL CHUNDER MOOKERJEE.

DEAR SIR,

I see from the Public papers that the Indian Government has appointed you to a Judgeship in the High Court—Allow me to convey my very best congratulations to you—I only trust that the appointment which is, I understand, an

acting one may be followed by your pucca appointment as Judge of the High Court.

* * * * * * * * * * * * *

Believe me to be,

My dear Sir,

Yours faithfully,

(Sd.) ROB. THO. LATTY.*

The next letter which I intend to introduce here for the perusal of my reader was written by the Hon'ble Justice W. Markby, Justice of the High Court, Calcutta, who, I do not demur to avouch, was in close sodality with the deceased, and loved him highly for his affability, and had a great respect and high esteem for his legal knowledge and ability.

2.

DEAR BABOO ONOOCOOL,

I cannot leave Calcutta without sending you one word of congratulation. I am

* A very respectable Attorney-at-Law in England.

thoroughly glad that you are appointed, and I am sure you will do good work.

Yours sincerely,

(Sd.) W. MARKBY.

November 30th, 1870.

3.

High Court Office,

Allahabad, 3rd December, 1870.

DEAR SIR,

I most respectfully congratulate you on your promotion to the Highest Judicial Tribunal in India, though the Calcutta Bar will lose one of its ablest members, but your elevation to the Bench is a national honour, national pride, and national glory.

I cannot express how happy I have been, since I have had this news from your worthy brother* Oprocash Baboo; your appointment to

* Baboo Oprocash Chunder Mookerjee, the sixth and the last issue of Baboo Lucky Narain Mookerjee, is now a distinguished Pleader in the Allahabad High Court.

the Judgeship has, I believe, given universal satisfaction.

I sincerely pray that you may long enjoy this honour, and that your conscientious opinion may always be held with favourable view by your honorable colleagues.

With profound submission,

Believe me,

Your very obediently,

(Sd.) SREE PRESHANNO DEB.

Since his elevation to the Bench of the High Court, he generally had his sitting with Justice E. Jackson, and it was a separate Bench known by the name of "Bench of Justices Jackson and Mookerjee;" and Justice Mookerjee sat also with the other Puisne Judges as well as the late Lamented Officiating Chief Justice J. P. Norman. He tried Regular, Special, and Criminal Motions, as well as Appeals: in fact within a very short space of time, eight months and a few days, for which he had his seat on

the Bench, he discharged the arduous duties that involve upon a Judge of the High Court, with great independence and ability.

I beg to subjoin here a very interesting case, tried by him, for the perusal of my reader.*

The subsequent case was remanded by Justices J. B. Phear and Dwarka Nauth Mitter, on the 16th of February 1870; but the Judge having dismissed the suit it came again to be tried on the 11th of August 1871, in the Division Bench, in the presence of the Hon'bles E. Jackson and Onoocool Chunder Mookerjee. But they having differed in their judgments, the case was referred to the Full Bench, presided by Justices L. S. Jackson, J. B. Phear, and Dwarka Nauth Mitter, on the 20th of September 1871, and they confirmed the Judgment of Justice Onoocool Chunder Mookerjee.

In the Full Bench the case being called on, Mr. Woodroffe (the late flower of the English

* See Appendix.

Bar here in Calcutta High Court and the Counsel for the Appellants), said, that the best argument he could use on behalf of his clients, was to be found in the judgment of the Hon'ble Justice Onoocool Chunder Mookerjee, in language so expressive, so logical and so terse, that he would commence by reading that judgment.

After the delivery of the judgment of the Court, the Hon'ble L. S. Jackson, the presiding Judge, said, that he was very happy in having had an opportunity of bearing testimony to the sound judgment and abilities of his late Lamented Colleague.

The other Judges were about to say something, when the Deputy Registrar of the Court came in, and brought the tiding of the brutal assassination of the late Lamented Officiating Chief Justice J. P. Norman, when the Court broke up in disorder.

The Hon'ble Mookerjee did bleed freely,

but he was not a leviathan on the ocean of liberality, nor he was a *Hatem* or a *Bolee* of his age, but one—whose like we may and should expect in an individual of his *status* and emolument: and the mode of assignment of his charities was to such men, as we truly wish and recommend, and exsuscitate enthusiastically. He used to give monthly something to his *Gooroo* or (spiritual guide), for the support of his family—to his *Poorohit* apart from what he used to get in every *Purbun*,*—to four Bramins who remained at his house and had no other source of income—to many of his ignorant kinsfolks whom he would not suffer to drudge in an humble sphere—to many relicts who had no hobbardy-hoy even to support them, and had no other source of sustenance left to them by their consort—and to many unfriended and helpless children to

* The festivity contained in the course of the whole year.

countenance them to tread the path of education in Medical and other Colleges and Schools: these were his regular and peremptory or *tranchant* menstrual distribution, which they do get still after his demise from his sons, who have been submonished by him on many occasions to do so. And exclusive of these regular charities there were others in which he indulged on the impulse of the moment and at the sight of the condition of those who did crave.

He was a faithful Hindoo, but let it not be understood that he was orthodox to that pitch, as there are many Bramins now, who, after having perpetrated heaps of the lowest dregs of vice, would go and bathe once in the Ganges and then nurture the thought—that they are now *saint-like*, and thus having a faith in that stream, as one having the power to absterse one's heart from sin, they will go on committing sin till they pop off, or till their doomsday.

He had no such troth in the Ganges, and feared the very name of sin. He knew it too well, that, if there be any virtue in bathing in that stream, it is contrary to all reasonable expectation, that it can rinse vice, or it is a purgatory here on this earth !—he knew that *vice* should be met with punition and *virtue* with guerdon. He observed all Hindoo ordinances and ceremonials.

His character was immaculate and was uniform throughout his whole life, and there was not the least change or modification of what he had in his childhood and of which I have made mention already. He was above-board and an urbane gentleman, and did not hold out the right hand of fellowship with formality, nor did he study to do so. On many occasions, when his friends did come to him in his parlour, he forgot even to order his servants to bring tobacco or *pan*, until they did so spontaneously. Once for the same

unsociable conduct or rather *insouciance* he having received a vituperation from his cousin Baboo Gopal Chunder, for not receiving his friends with those things, when his friends were sitting engaged in tittle-tattle with him for more than an hour, he answered smilingly —"*Dada*, I like you should beat into my head these things, and I hope I will learn it in no time—but in the mean time I beg to say, you could have done the job for me as you are my senior."

When a boy he was filamentous, but gradually in the course of time he became plump as a partridge, and so much so, that he weighed himself two *maunds* and three and half *seers* on Monday, the 10*th* of April 1871, and many able doctors said that he will very soon be caught by palsy; but to put him on guard it was required that he should take some physical exercise,—which he used to do since that time. He was neither a Brobdignagian nor a

Liliputian, but a man of mediocre size, fair complexion, well-shaped nose, hazel eyes and ears well proportioned to the face which was of a little round cut with a wide front and rubiform lips. He had moulded arms and legs, and the palms of his hands and feet were very small and thick with their proportionate fingers. His head was large, it had very thin hairs on it; and he had a mustache not close set, and a little brownish on the top of his upper lip.

His dress was unaffected—he used to wear *Dhootee* and *Chadur* on all occasions except when going to Court, office, or to see any European gentleman, or attending any European party. And even on going to see a *Nautch* or something of the like, I have never seen him in a dress fine as a carrot fresh scraped, but *esq perpetuum* in Pantaloon and in satin or broad-cloth *Chapkan*, with a *Toopee* well quadrate to the dress. But for the last two or three years he was constrained to veer his

national *Dhootee,* even when at home, for Pantaloon, and this is ascribable simply to the fattening of his belly, to suppress which and to guard against further corpulence, on being advised by his doctor.

Justice Onoocool Chunder Mookerjee departed this life at the age of 42 on the 2nd of Vaddur, 1278 B. S., corresponding with the 17th of August 1871 A. D., of paralysis and *ruptum* of a blood vessel, leaving four issues, two male and two female. On Wednesday the 16th, he attended the High Court and delivered a judgment in a certain case: he then came in his chamber to take his wonted tiffin, and felt a slight headache, which gradually aggravated and became so uncontrollable, that he left like a toad under a harrow; with great difficulty he spoke to his friend Justice Mitter to manage his removal to his lodging at Chowronghee, at the same time to inform or apprize Justice Jackson with whom he was sitting on the same

Bench of his indisposition, which will cause him to be absent from the Bench for that day,—and who knew to EVERNESS! He reached his Chowronghee house at about half-past two, and had a profuse stool, when he felt himself so debile that he could not be removed to the upperstory-room and was laid down on a sofa in his chamber on the ground-floor: he exchanged a few words with his friend one Gosain (who was ever and always in his company and whose family subsisted upon his liberal bounty), in so melancholy a tone, that sorrow segregates my heart to write them here: "The feast of reason and the flow of soul"* is this:—

H. M. What do you see my Gosain?

Go. What do you mean, Sir?

* This colloquy which only lasted a few minutes was carried on strictly in colloquial Bengalee, and I have given a version here in English, retaining as much originality of thoughts and sentiments as was expressed in the conversation in an unabridged form.

H. M. I mean my present state, as you see me now.

Go. Nothing, only that you are a little ill at ease.

H. M. Forget and forgive my dear friend.

Go. What do you mean by that, are you madbrained, Sir?

H. M. No, I am in sober senses, but do you remember what I have told you about fifteen days ago?

Go. No, I do not understand what you allude to.

H. M. Well, about the death of my father!

Go. (Remained mute for a few seconds, then in melting mood), yes, but what of that? God is ever good and merciful!

H. M. My dear Gosain, I have told you about fifteen days ago, that my time was very near to its close, and my father went to reside with the morning stars at about this age of mine;—accordingly I prayed to God for the

last few nights, knowing that I will soon be numbered with the dead.

Go. Sir, your father's death cannot be a *paradigma* for yours, and as for your saying every night "*Hurry Bollo, Din Gallo,*"* was nothing else but your having had a true faith and love in *Ens Entium.*

H. M. Hurry Bullo, Din Gallo!

And having said these words he hermetically sealed his lips *not to open them again.* All the well-known doctors of Calcutta that could be procured for a man of his position and wealth were brought,—Doctors Payne, Fayrer, and Nilmadhub Mookerjee and others: they did what they could do, with their puissance and knack of medical knowledge, but it proved after all as if to milk the ram! His wife and children had not the mournful consolation to hear his last words, he remained *sotto voce* for

* *i. e.*, Let me take the name of God, my days are about to be numbered.

a few hours and then went to God at about 6 P. M. The Doctors all returned with tears in their eyes that they could not cure him—his wife, "whose anguish it would be impossible to describe," shrieked bitterly, weltering on the ground and tearing her hairs in frenzy that she will never be able to exchange a word with him any more—his children did *fondre en larmes* that they will never be able to see their dear father any more—his friends all who came to see him could not see him alive, and departed broken-hearted—his servants cried out for him whom they will never serve any more; and there remained in the hall the corpse of him, who was a day before on the Bench of the High Court deciding the fortunes of thousands of individuals! The body was removed, and consumed to ashes according to our Hindoo rites and ceremonies. The house presented a second Babel or a pretty kettle of fish. The night came on, and with its gradual advance

all cry of sorrow was hushed in the house, and every one therein was at last buried in deep slumber, being made weary with weeping and wailing. Now my dear reader, give a loose to your fancy—what ghastly aspect the house presented! It was as if dreary and desolated but for a man. The hall which was decorated most tastefully with paintings and valuable articles of furniture, which made it an object of gaze a few hours ago, was most harrowing to the sight, being deprived of its legitimate ornament—the presence of that individual from whom it desumed its beauty. But where is he—the Hyperion of his house—the pride of his countrymen—and an object of love and admiration to his friends? He is gone—and gone for ever from this world! The grim and inexorable death (as we say) has taken him in an evil hour and caused a great bereavement to our country! But has death any preponderance over such a great and good man?—Yea I know it has!

Poet Edward Young, in his "Night Thoughts," says :—

"Death, great proprietor of all! 'tis thine
To tread out empire, and to quench the stars.
The sun himself by thy permission shines,
And, one day, thou shalt pluck him from his sphere."

Death has no respect for a man himself or for his position, and nothing in this nether world has domination or power to avoid or escape from its pestiferous shaft (as we say) : —*Mors omnibus communis.* This is a world of matter, and everything here must die or must of course undergo mutation ;—or in other words, death is nothing else than a transition from one position of the man to another, when the material coil undergoes a change : but Poets in the flights of their fancies have described it in such a way, and with so much colourings, as to make men shake like aspen leaves at the sheer name of *Death.* Lord Bacon says—"Men fear death as children fear to go into the dark," surely as children boggle

to hear the name of a kidnapper! I have already said, there is a change in the world of matter;—then what becomes of the man?—this is a fair question which every one may ask. A man dies, and what is man?—the only exterior mortal coil which bears that designation, and he who does all that we see in this world is that essence, which cannot be perceived by our material eye—for it is spiritual: and what becomes of this spiritual is a *pons asinorum* which I like to decipher now. It is a problem most enigmatical and abstruse. "There is no work; nor device, nor knowledge, nor wisdom, in the grave, whither thou goest." And therefore whatever we say, whether in favour or against it, is on the strength of common sense and argument.

Poet Shelley says:—

"This world is the nurse of all we know,
This world is the mother of all we feel,
And the coming of death is a fearful blow,
To a brain unencompassed with nerves of steel:
When all that we know, or feel, or see,
Shall pass like an unreal mystery."

And this is because we are not accustomed to it, nor it is possible for us to become so. The truth comes glaringly before our eyes and not till we are dead or are about to die—and as long as we are alive, it is an hermetically sealed book to us, and no better than "an unreal mystery." We are subject to death once; but if it had been twice and in this very world, with the full knowledge as to what we were prior to our death, nothing then with the experience of our first death would have appeared at the time of our second death as "mystery."

Death is a change—a change in form and position of an individual, apart from his material organization—which is dislocated and is mixed with the earth. But change for what and where, is the question at issue. In the present state of things as there are no *data* for it, these issues should be decided according to the belief of every individual. It is an

indubitable fact that a man cannot be restored to his living state after he ceases to be. And why so when you see in him everything, and except something—and because that something is not in him? It is as if the *key* of that machine—the body, which being without it, should remain useless and consequently become rusty and go into decay. *In esse*, the *key* is priceless and superior to the machine itself;—it cannot be therefore any other than immaterial or spiritual, and it leaves the present organism for a better one; and that better must also be spiritual. The *key* therefore is the man's spiritual self with all his attainments and experience here in this world;—for a better one he makes progress, and he should!—and death is the *vestibulum* to the unknown better country. Why fear we then death, when it is merely a change and a change for the better, and for a better place—and why do we then weep over one's grave, when we know

that he is taken into a better place than this where he so long was? But aloof from this, we ought to be prepared for its onslaught, and manifest sunshine to the utmost at the death of our dear friends! But such is not the state of the world, and it cannot be so until we better understand the truth of spiritualism—get spiritual eye, and until our spiritual perceptions become clear. When the Hon'ble Onoocool Chunder Mookerjee left this earth, all wept for him, and whole Bengal was in lachrymation—and more I shall say, that even the learned Judges of the High Court heaved sighs and closed it on its Appellate and Original Sides.* But they

* I cull the following from the "Hindoo Patriot," dated August 21, 1871 :—"The Chief Justice said—Baboo Aunnoda Prosad and Mr. Allan :"

"The Court will not sit to-day in consequence of the death of our lamented colleague, Mr. Justice Onoocool Chunder Mookerjee. I am sure that I speak the sentiments of every one of my brethren on the Bench, when I say that I feel that in losing him, the Government have lost a most valuable public servant,

never would have done so at the time for Hon'ble Mookerjee !—if they had thought that,—

"Through other scenes thou now dost rove,
And clothed with gladness walk'st the courts above,
And listen'st to the heav'nly choir,
Hymning their God, while seraphs strike the lyre.
Safe with them in those radiant climes of bliss,
Thou now enjoy'st eternal happiness."*

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a Judge devoted to his duties, most calm, and conscientious, laborious, thoughtful and considerate of the interests and feelings of everybody who came before him, whether suitor or advocate. For myself personally, I have known him and esteemed him ever since I came to the country. From the time I first sat in this Court, I remember well, being struck by his clear intellect and his lucid statement of a case, a statement on which the Court could always implicitly depend. To say that he was truthful, is but a small thing. He was perfectly candid. He never would overstate his case, he never would put a false colour or misrepresent facts. Independent and courageous

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* These beautiful poetic lines I have culled from an ODE on the death of Mr. Thomas Gray, out of the collections of Poems, addressed to, and written in memory of, the above Poet.

in the highest degree, he never shrank from contending against the opinion of the Court, however strongly it might be expressed against him, if he felt that the interests of justice or of his client required that he should maintain his position. His character was marked by frankness, simplicity and entire freedom from affectation. As a friend, those who knew him esteemed him most. I have the authority of Mr. Justice Elphinstone Jackson, who has just left the Court, for saying that during the last seven or eight months, that he has sat with him, never had a difference with him, and that he was learning day by day to value him more and more for his independence, his integrity, and that which he possessed in an eminent degree, that quality which Englishmen value above all others, the feelings of a perfect gentleman and a man of honour. I can speak of my personal intercourse and friendship with him; our conversation was always upon the same footing as if he had been of the same blood and the same education as myself; I always felt most thorough and complete sympathy with him in everything. I know, gentlemen, that you share in the grief which I feel for the loss we have sustained, and you at the Bar who knew him better must have loved him best, it is with deep regret that I have to make this announcement to you. Out of respect to his memory, the Court will not sit to-day."

"Mr. Justice Phear similarly closed the Court on

the Original Side, and made the following remarks with much feeling: "

"Mr. Lowe, by the melancholy death of Mr. Justice Mookerjee, the Bench has lost an able Judge, and the Bar a distinguished Member; I feel too that I have been deprived of a personal friend for whom I had a high regard. I think it will be only a proper mark of respect for the memory of my late colleague that this Court should be closed for to-day."

"Nothing could be more honorable than these noble testimonies to the worth of the departed. Baboo Onoocool Chunder's presence on the Bench, though only for a short time, was not without some influence on his colleagues. It is said that to him was to be traced the change in the current of decisions in enhancement suits, which for some time used to be summarily dismissed without rhyme or reason. If Onoocool Chunder was an ornament to the Bar and the Bench, he was also an ornament to the society to which he belonged. Possessed of unassuming manners, an affable disposition, and a genial and kind heart, he was always the same man to his friends whether working a humble Nazir at Howrah, or dispensing justice from the Bench of the Highest Tribunal in the land. Peace be to his ashes!"—*The H. P.*

In the following Genealogical Chart of the Mookerjee Family (see next page), traced from as earliest a generation as memory can possibly rely on the tablets of reminiscence, or any roll in possession of our Ghuttucks* can possibly supply with, I have concatenated the individuals who were the primogenitors of the Mookerjee Family of Pathuriaghutta, or the immediate line from which the Hon'ble Mookerjee descended, taking only the male members and discarding the female—as I find it very unfeasible to know even the precise number of female issues the Hon'ble Onoocool Chunder had before Boiddo Nauth Mookerjee.

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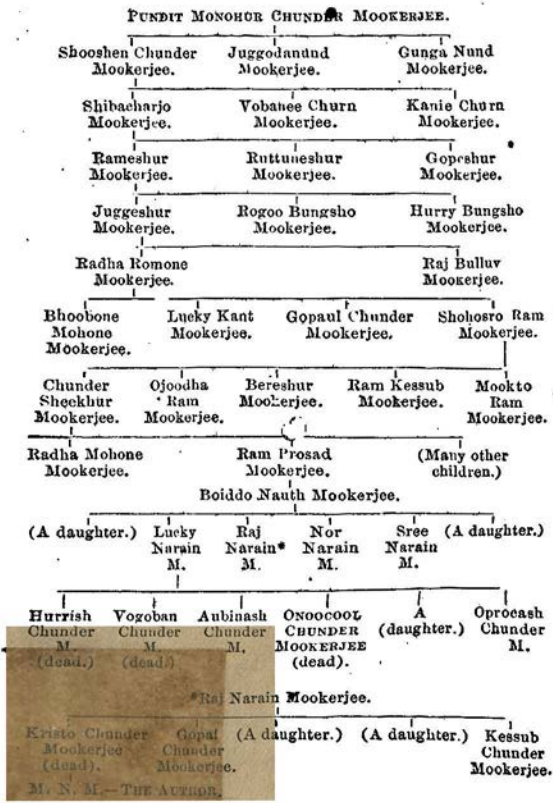
* Ghuttucks are a class of persons much analogous in their functions to the Bards of Ancient Britons, and their presence is chiefly welcomed on the occasion of a ceremony celebrated at a *matrimonii*, when they rehearse the deeds and achievements or the status of honour in respect to *Coolinism* of the grandsires of the bride or the bridegroom, and receive then and there *honorarium* according to their respective dignity either for learning or for high parentage. But as this class of persons having run into ignorance and uselessness are now spurned and hooted out of society by some, and their number is becoming thin and thinner year after year, they exist now only in empty name.



My dear Reader, *Au Revoir!*

Appendix.

SPECIAL APPEAL

No. 267 of 1871.

Decision of the Division Bench

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

THE 11TH AUGUST 1871.

Present:

THE HONORABLE E. JACKSON and THE HONORABLE ONOOCOOL CHUNDER MOOKERJEE, *Judges.*

Case No. 267 of 1871.

Special Appeal from a decision passed by the Judge of Sylhet, dated the 31st December 1870, reversing a decree of the Moonsiff of Sylhet, dated 29th May 1869.

Doorga Churn Dass and others ... { *Plaintiffs, Appellants,*

versus

Boro Singh Rajah ... ... { *Defendant, Respondent.*

For Appellants.—Baboos Rajendro Nath Bose, Bama Churn Banerjee, and Aushootosh Dhur.

For Respondent.—Baboo Greesh Chunder Ghose.

Mr. Justice E. Jackson.—This is an appeal from the decision of the Judge of Sylhet. The case has been once before on special appeal to this Court, and was then remanded to enable the plaintiff to give evidence upon a special point. The Judge has now heard that evidence, and is of opinion that it does not make out the plaintiff's case to his satisfaction. The Judge has accordingly again dismissed the plaintiff's suit.

This is one of thirty-nine similar suits instituted by the plaintiff. It is admitted that the same questions are in issue in all of them, and that the decision of one will govern all the cases.

The plaintiff has purchased a 3-anna share of the rights and interests of the Rajah of Jynteea in fourteen pergunnahs, which appear to have constituted originally the Jynteea Rajah's kingdom, but which were confiscated by Government and subsequently settled for 20 years with the Moran Coal Company, of which one Mr. Sweetland was the manager. From him it is alleged that the Rajah derived a 6-anna share in the so-settled fourteen pergunnahs; that he remained in possession of

them until he died, and that his rights having been since sold at auction in execution of a decree of Court, and the plaintiff having obtained a 3-anna share from the auction-purchaser, is entitled to obtain possession.

The defendants are the original cultivators of the land. They denied from the first that any transfer of the 6-anna share had been executed in favor of the Rajah of Jynteea by Mr. Sweetland; and they further denied that the Rajah had ever been in possession of that share, or had ever collected any rents from them. They admitted that Mr. Sweetland had obtained the settlement from the Collector, but added, as appears to have been the case, that his right to alienate or transfer any portion of the settled land was distinctly debarred under the settlement, unless such transfer was sanctioned by the Collector, and therefore that if even any such transfer had taken place, it was void; that, on the other hand, Mr. Sweetland's rights in the portion of the settled land of which they were in possession, had been transferred by Mr. Sweetland's successor, Mr. Walker, to them, with the consent of the Collector, and they had, since that transfer in 1859, been in possession.

The Moonsiff held the transfer to the Rajah to

be proved, and to be a valid transfer, and gave the plaintiff a decree. The Judge on appeal dismissed the suit, 1st, as barred by limitation, and 2nd, on the merits, on the ground that though the deed of transfer had been proved, it had all along been treated even by the Rajah himself as a dead letter; and further, that the transfer having been made without the consent of the Collector, was not valid as against a transfer made with the Collector's consent.

There was a special appeal to this Court, when the Judges set aside the decision of the Judge of Sylhet on the point of limitation, and upon the merits observed, that although there was undoubtedly much in the case to support the finding of the Judge, still the issue whether or not this *ekrar* was allowed by the Rajah to become a dead letter and was never acted upon was not raised in distinct terms in either of the Courts below, and consequently the plaintiff had not had an opportunity of bringing forward the evidence which he might have in support of his side of the case. They therefore ordered that an issue on that point should be raised and decided. The Moonsiff upon the further evidence has again come to the conclusion that the Rajah did act upon the *ekrar* and was in possession

of the disputed land, but the Judge has come to a contrary conclusion. Both on this and on the former occasion, the lower Courts went most carefully into the case and recorded the grounds of their conclusions at great length. The Judge has alluded to each separate document put forward by the plaintiff, and given his reasons for rejecting or admitting its genuineness, and has, when genuine, given his reasons for his finding that it does not prove that the Rajah acted upon the *ekrar*. He also in a similar manner distrusts the oral evidence offered by the plaintiff.

The special appeal now before us takes exception to his findings on this evidence. It is urged that his conclusions are not justified by the reasons which he has assigned for them, and that even upon his findings in favor of the plaintiff, as far as they go, the plaintiff is entitled to a decree.

There is some difficulty in dealing with the case, partly because the *remand* order of this Court dealt with only one portion of the merits of the case, *viz.*, as to whether the *ekrar* had been allowed by the Rajah to become a dead letter and had never been acted upon, and left out of view the Judge's decision, that in consequence of the absence of right to transfer without the consent of the

Collector, the plaintiff's title was bad against the defendants.

The first point to be considered is the appeal before us. Of course, if there is any finding of the Judge which proves that the Rajah did act upon that *ekrar*, his conclusion that it was never acted upon must be set aside. The Judge finds that it was executed. Witnesses have deposed to its execution, and the Judge believes their evidence. There is no evidence as to the negotiations which took place before the deed was executed. But the Judge, on the first occasion, states that at the time the Rajah and Mr. Sweetland were both residents of the town of Sylhet, and that the circumstances of the case, more especially the difficulty which Mr. Sweetland experienced in collecting the rents of the estate, made it very probable that he would make such a transfer in order to obtain the assistance of the Rajah in making his collections. The Judge finds that the deed was then and there registered; but he seems to be of opinion that beyond the subsequent sending of it to the Rajah no further action was taken upon it. As to what happened when the deed was sent to the Rajah, the defendant has given some direct evidence to the effect that the Rajah refused to have anything to do with it. The

Judge has not gone into this evidence in detail, and he does not say whether he believed it or not. I think he should have given his opinion upon it. It is supported to some extent by the finding of the Judge on the plaintiff's evidence.

The Judge, after considering the whole of the evidence offered at the first trial and on remand, has undoubtedly been satisfied that this deed of transfer of six annas was never acted on and was allowed to become a dead letter. It is a question how far in special appeal this Court can differ from the Judge on such a question, which is one of fact. Its decision depends not upon one or two pieces of evidence, but upon all the evidence offered in the case. The facts deposed to occurred very many years ago, and even if it is the case that one or two isolated facts are deposed to and documents put in, still the credit to be given to those facts and documents must rest upon the general evidence in the case. My own impression, after reading all the decision in the case and hearing a large quantity of the evidence, is, that there is great probability in favor of the conclusion which the Judge has arrived at being the correct one. It is an undoubted fact that since the year 1869, the Rajah has never attempted to assert any title under this deed of

transfer,—that is, that since the subsequent transfer with the consent of the Collector to the defendant, the Rajah, at least as regards those portions of the land so transferred, has never put forward his rights. Now, if the Rajah had thought he was entitled to a 6-anna share of this land, there seems no reason why he should not have put forward his rights. Either he thought his rights were invalid against the defendants in consequence of no sanction having been obtained from the Collector to the transfer to him, or it may be, as the Judge has found, that in fact the Rajah never accepted the transfer, and, as the defendant's witnesses say, refused to have anything to do with it. If he had accepted it, and was collecting rent under it, he would have continued to do so in all probability. He would not have stood by and allowed his rights to be invaded by other parties. He was bound then and there to come forward and assert his rights. His silence almost amounted to an acquiescence that he had no right. But even though he did not assert his rights over the parcels of land which were alienated to third parties, is it certain or even satisfactorily proved upon the evidence, that, as respects other lands not so alienated, the Rajah continued to collect rents? There are witnesses brought in who assert that he

did so and that they paid him rent, but there is not a document in support of their depositions, though on their own evidence such documents ought to be forthcoming. And further, the evidence on this point is contradicted by the evidence given at the original trial which was to the effect that the Rajah only collected rents for two or three years after the transfer. Then, when we come to the evidence as to the two or three years immediately after the alleged transfer, there seems very little doubt that not only did the Rajah not obtain any actual possession, but even the Coal Company did not. The Company found they could not get possession. They petitioned to that effect, and finally they gave up their settlement to other parties. The remaining evidence that the Rajah acted upon this transfer is that of Chandmonee, who deposes that the Rajah paid some money for the expenses of surveying and obtaining papers connected with the estate, and that he paid the Rajah a share of the collections. Both these documents are of a date almost immediately after the deed of transfer. They are in fact the solitary acts deposed to as proving that the Rajah acted upon the *ekrar*. The Judge discredits the witness and discredits the receipt of the Rajah. I am not prepared to say that all the reasons which

he gives for this conclusion are sound. Some of them are not the reasons which I should have given. But I must add that I should hesitate to trust the fact that the Rajah acted upon the *ekrar* upon a couple of chance documents like this. They may be true, but if they are true, it is unintelligible that the Rajah should not have continued to press his claim and make his collections, which I hold it is not proved that he did. It is always most unsatisfactory that the question of a ten years' possession should rest on oral evidence unsupported by any document except such as these two. Ordinarily speaking, the receipt for the payment to the Rajah should have been in the custody of the Coal Company, and there is nothing certain in the other document to prove that the Rajah ever actually paid the money. The fact is recited in it, but his subsequent absence of all claim militates against the truth of the payment.

I think that the parties in this case stand on a very different footing from that in which the Rajah and Mr. Sweetland would have stood, though if the Rajah rejected the deed from the first and never acted upon it, and could not prove that he shared the expenses and the profits, I doubt if even he could have recovered against Mr. Sweetland. Here we have as defendants the undoubted unmolested

proprietors of the last ten years and longer, the Rajah, whose claim the plaintiff has purchased, having never, since the defendants' proprietary title commenced, asserted it in any way against them. The plaintiff now asserts the Rajah's claim. He is bound to give very clear evidence of a state-claim like this. I must say that if I had been the Judge in the original Court, I should have decided as Mr. Cockburn has, and therefore even though I may not agree with him in all the reasons which he has recorded, I think I ought not to disturb his judgment.

It seems to me that even upon the question of title, the plaintiff's title is superior to that of the defendant,—the former is derived from an unsanctioned transfer by Mr. Sweetland who had no authority to transfer; the latter stands upon a sanctioned transfer.

I would therefore dismiss this and other analogous appeals with costs.

E. JACKSON.

Mr. Justice Mookerjee.—It appears that one Mr. Sweetland, on behalf of the Moran Coal Company, had obtained a settlement from Government, on the 30th April 1856, of the lands of 14 pergunnahs, which had once belonged to the Rajah of Jynteea. On the 7th March 1857, Mr. Sweetland admitted

the then Rajah of Jynteea, Rajah Rajendro Singh, as a partner, to the extent of six annas, in the lease; that subsequently, in the year 1867, the rights and interests of this Rajah in this lease having been sold in execution of a decree, the execution-creditors purchased it, and then sold a moiety to the present plaintiff.

The plaintiff has obtained possession of the other lands in these mehals, but was opposed by the defendant, who set up hostile titles against him. The present suit is to recover possession of a 3-anna share of 904 bighas of land in the possession of the defendant, situate in Pergunnah Pyellgool.

The defendant denied the title of the plaintiff; denied that the Rajah had ever been in possession of the land; pleaded the statute of limitation; and contended that ekrarnamah (or as it is technically called an *istifa* in that part of the country) is false and fabricated.

In the Court of first instance, there were only two material issues on which the parties went to trial. The first was the issue of limitation, and the second was on the merits,—namely, whether Rajah Rajendro Singh did obtain the *istifa* from Sweetland or not.

The Moonsiff decided both these issues in favor

of the plaintiff, and gave him a decree for possession.

On appeal, the Judge of Sylhet, though admitting the genuineness of the *istifa* of Sweetland, which was hotly denied by the defendant, decided the case against the plaintiff on the ground of limitation. He also held that the *istifa* was never acted upon by the late Rajah of Jynteea, but was allowed to become a dead letter from its very inception. On these and other grounds, the Judge was of opinion that the plaintiff was not entitled to a decree.

On special appeal to this Court, the decision of the Judge was set aside *in toto*, and the case was remanded to him to be tried on a particular issue,—namely, "whether or not this *ekrar* was allowed by the Rajah to become a dead letter and was never acted upon." The Division Bench, who remanded this case, directed the Judge to send this issue to the Court of first instance pursuant to the provisions of section 354 of the Code of Civil Procedure.

The Court, Messrs. Justices Phear and Mitter, were of opinion, that "the plaintiff's right in this suit, therefore, depends upon the question, whether or not the *ekrar* is authentic, and if authentic, whether it was given up or waived by the plaintiff's

predecessors in the way in which the Judge had found that it was."

The Moonsiff has answered this issue by holding that there is ample evidence to show that the Rajah had never waived his right under the *ekrar*; that he had done all that he was required to do to perform his part of the contract, and that Sweetland and his successors had also, for some time at least, acted up to their part of the condition of the *ekrar*.

The Judge has, however, again dismissed the suit of the plaintiff, on the ground that there is no evidence of the receipt of any rent on the part of the Rajah of Jynteea, and that, although Mr. Sweetland and his successors had recognized the rights of the Rajah, and collected rents from the tenants on the joint account, that, yet, as there is nothing to show that the Rajah did anything *himself*, he must be held to have allowed the *ekrar* to become a dead letter, and the deed, must be held inoperative, for it was never acted upon by him.

On special appeal, it is contended that the Judge is wrong in placing the entire burthen of proof on the plaintiff; that even if the onus has been placed rightly on him, that plaintiff has fully discharged the same; and that, on the finding of the Judge himself, the plaintiff is entitled to a decree.

It will appear from what has been stated above, that the defendants did not raise the objection that the *ekrar* was never acted upon, though a genuine document, but that that this plea was raised by the Judge himself on the former occasion, when he decided the case upon the ground under the belief that neither the Rajah nor Sweetland, from whom the defendants had derived their title, had possession of these lands before. The High Court, however, was of opinion that the Judge was wrong in holding that the plaintiffs are barred on the objection of defendants, who, according to their own title-deeds, were the *jotedars* of Sweetland. The Court remarked that if the *ekrar* of the plaintiff was a genuine document, and was an operative instrument of conveyance, the possession of Sweetland was the possession of the predecessors of the plaintiff.

The only question that was raised by the defendant in the Court below was that the *ekrar* was not a genuine document, not having been executed by Sweetland.

However, as the High Court had directed the trial of the issue of waiver, the Courts were bound to carry out the order.

The Judge, on the additional evidence which had after the remand been put in the record, has not

only found that the *ekrar* was a genuine document, but has found what I consider to be all important, and most relevant to the issue sent down, that the Rajah had actually carried out his own part of the contract by paying down a sum of Rs. 560-13-9, which was the 6-anna share of the expenses actually incurred, and expected to be incurred in future in procuring copies of certain documents required, in order to ascertain the bounds and limits of the estate leased to Mr. Sweetland.

The *ekrar* distinctly provided that the Rajah was to pay a 6-anna share of these expenses, and Sweetland was to provide for a 10-anna share. The Judge has also now found as a fact, that Mr. Coleman, the successor of Sweetland, had appointed the witness Chandmonee as a collecting mohurir on behalf of his employers, the Moran Coal Company, as well as that of the Rajah Rajendro Singh, and that pottahs were granted and rents collected by Coleman, for some time at least, on behalf of both these parties.

The Judge says that "although I find this to be a genuine document (*viz.*, the document by which Sweetland admits the receipt of Rs. 560), I do not find, for reasons given above, that it proves that the *ekrar* was acted on by the Rajah."

Now let us see what are the reasons alluded to above. When deciding that the purwana to Chandmonee was also a genuine document, the Judge had remarked, that "having found this to be a genuine document, what is the result? Does this finding in any way help the plaintiff? I do not see that it does. By itself it merely shows that seventeen days after the *ekrar* was executed, Mr. Coleman, under its provisions, appointed Chandmonee. It in no way proves that the Rajah acted on that *ekrar*, and it is quite possible that Mr. Sweetland and his successors may have done many things in accordance with that *ekrar* without the Rajah himself having ever acted on it. I apprehend the High Court's meaning in the remand order was that the plaintiff should prove that the Rajah acted on it, and not that the other party did so."

Now, in the name of common sense, why, after all these things were done, should it be said that the *ekrar* was an inoperative document, and that the Rajah should be presumed to have allowed it to become a dead letter; that he waived all benefit under it, or treated it as an *escrow?*

If a man procures from another a deed of partnership duly and formally executed; if he, in accordance with the terms of that deed, pays a consider-

able sum of money as his share of the joint expenses of the concern, and if the managing partner appoint a joint servant for the collection of the rents of the estate, and if rents are actually collected on account and in the names of both the partners, can it be said by the managing partner afterwards, that the other partner had waived his right in the concern, merely because that person has not sued him for his share of the profit for a certain number of years? I think a Court of Justice would not draw such an inference, but would expect that waiver should be proved by some precise evidence, showing when, how, and under what circumstances it took place. The presumption drawn by the Judge below, from the mere absence of proof, that the Rajah was in *continuous* possession of the rents and issues of this property, is wholly wrong. It is wrong in law as well as incorrect in fact.

The contention of the defendant is something like this: True I took from you a money consideration, and executed a deed in your favor and made collections in your name of your 6-anna share, but as I have not honestly paid or accounted to you your share of the profits, and unjustly and in opposition to my covenant to pay you the same annually, have fraudulently appropriated the same to my use

for eight or ten years, it must be presumed that you have allowed this deed to become inoperative and a dead letter, for if not, why did you not punish me for my fraudulent conduct for this long time?

I should think that, after the execution of the deed is proved, and after a valuable consideration is established to have been paid by the Rajah to Sweetland, the burthen of proof of waiver would rest so heavily on the defendant, who has specially pleaded this plea in avoidance of the contract, that the clearest evidence would be requisite for its discharge. The defendant should never be allowed to ask a Court of Justice to draw any inference in his favor from his (the defendant's) own wrongful acts. It is not shown to us what, looking into the terms of the contract, should have been done by the Rajah which he had omitted to do, and which should tell against him or which could be tortured into a waiver on his part.

The deed executed by Sweetland recites "that out of the 16 annas of all the lands of the 14 pergunnahs which I have obtained from the Sircar Bahadoor, under a settlement, *I make over* to you (Rajah) a 6-anna share, and I stipulate that the management of the zemindary affairs, consisting of collections and realization of rent, should remain with me; any

Amla, who will be appointed for the purpose of making collections, should not be appointed without the consent of both the parties and without my will; that the money which will be collected from the said mehal by the joint Amla shall be deposited with me in trust; that at the latter end of every year after the adjustment of accounts I will explain to you the same, and if there be any profit, then you shall have the same in proportion to your share, and if there be any loss, then you should make up to me the loss in proportion to my share."

The last portion of this *ekrar* required that the Rajah should pay a 6-anna share of all expenses incurred, and likely to be incurred, in obtaining copies of chittas and maps.

Now, that the Rajah has paid this sum of money is proved to the satisfaction of the Judge.

The plaintiff has, notwithstanding the fact that he is auction-purchaser, given ample evidence of the receipt by the Rajah of a certain sum of money, Rs. 416, in 1858 from Mr. Walker, through the witness Chandmonee, whose appointment as collector of rents is found proved by the Judge. The first Court unhesitatingly accepts this document as amply proved, but the Judge, without discrediting the large body of evidence brought in support of it,

seems to be not satisfied with this document. The reasons assigned by the Judge are far from satisfactory; but without going the length of holding that the Judge is utterly wrong in discarding this piece of evidence from his consideration, I think that even if the burthen of proof was on the plaintiff, that he has amply discharged that burthen. The High Court, in remanding this case to give an opportunity to the plaintiff to bring forward "evidence which he may have in support of his side of the issue," cannot be understood to have meant that the burthen of proof was strictly and exclusively on the plaintiff, or that the defendants are relieved from proving anything.

I should think that, according to the circumstances of this case and the nature of the plea raised, the burthen of substantiating that plea lay wholly and exclusively on the defendants.

It was quite sufficient for the plaintiff to prove that the deed was not an *escrow*, but a genuine deed of partnership, executed for valuable consideration,—a deed which was delivered by one party to the other, and under which the predecessors of the defendants collected rents for both at least for a year.

If the claim of the plaintiff is not barred or extinguished by lapse of time, I am clearly of opinion

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that he is entitled to succeed, provided there be no precise, satisfactory and clear evidence on the part of the defendant that at any particular time the Rajah distinctly and clearly gave up the rights which undoubtedly vested in him by the conveyance from Sweetland.

The Judge admits that the predecessors of the defendants had for some time at least acted under the full belief that the contract was a binding contract both in conscience and in law. The Judge allows that the Rajah paid a large sum of money as required of him by the terms of the *ekrar*, but all these were not sufficient in his opinion in law to prove that the *ekrar* was an operative document.

The lower Court says that this sum of money was paid two days after the execution of the deed, and, that, therefore, it does not show that the Rajah acted up to the terms of the contract, but it rather shows "that it was a part of the execution of the *ekrar* and not a thing subsequently thereto."

Now, suppose this money had been paid six months after the date of the deed, or suppose the Rajah had dishonestly refused to pay this sum, and Sweetland had sued him for it, what would have

been the opinion of the Judge in those cases it is difficult to conjecture.

Because a man honestly pays down a sum of money, which, according to the terms of his contract, he had stipulated to pay, and because that payment is close on the execution of the contract, is he to lose even the presumption that he accepted and approved of the deed, and at least at that time never dreamt of waiving his rights under that instrument ?

I am clearly of opinion that presumptions like those drawn by the Judge in this case from the acts of the parties are most mischievous in their effect, and are most unwarranted and unjust.

The Judge does not allude to any evidence adduced by the defendant, which satisfied him that at a certain period or in a certain manner the Rajah of Jynteea had refused to avail himself of any benefit under this ekrarnamah. The Counsel for the respondent was unable to point out any evidence that his client has given to that effect.

It is simply said that the defendant had examined a witness or two, who depose that, at the time the deed was first presented to the Rajah by Gunga-

dhur, he at once indignantly refused to accept it as derogatory to his dignity. Now, such evidence it is almost impossible to believe under the circumstances of this case, and I think the Judge after his findings on remand did not and could not credit the same. The Judge was of opinion that by the order of remand the High Court had laid down that the whole onus of proof was on the plaintiff, and as plaintiff, according to his law of presumptions, has not proved any fact which can lead him to infer that the document was ever intended to be operative, he dismissed the suit of the plaintiff.

In the absence of any suggestion that there is any reliable evidence to show that the Rajah had declined to avail himself of the interest created in his favor by this *ekrar*, I think it is unnecessary to harass the parties by a remand of this case again to the lower Appellate Court.

Indeed, I am quite prepared to say that the defendants should not have been allowed by the Judge to make a completely new case on appeal from that originally made by them in the Court of first instance.

The question of waiver was never raised by the defendants either in their pleadings in the issue or

in any oral statement made in the first Court. They were satisfied, as I observed above, to go to trial on the simple issue as to the genuineness of the deed. When both the Courts were of opinion that the *ekrar* is proved, I think it was not competent to the defendants to attempt to make an entirely different case by pleading that, though the deed is genuine, it had been allowed to become a dead letter by the Rajah.

Lord Westbury, in the case of Eshan Chunder Singh *versus* Shama Churn Bhutto, has justly remarked, that it is absolutely necessary "that the determinations in a case should be founded upon a case either to be found in the pleadings or involved in, or consistent with, the case thereby made."

Here in this case it is quite clear that a new statement of facts from that originally contained in the record of this case and quite contradictory and inconsistent with the case stated for the defence has been allowed by the Judge to be pleaded, which, I am of opinion, it was wholly incompetent for him to do. However I am of opinion that the delivery of a deed by the executant to the person in whose favor it is executed, unconditionally takes the deed out of the category of deeds called *escrows*, even

where delivery is not directly proved, but it is shown that the executant had "acted under the instrument, and to have done a variety of things confirmatory of the contract," it has been held that such acts amounted to an acknowledgment of the delivery. In this case the delivery of the deed is proved, and it is found by the Judge that Sweetland did a variety of things confirmatory of the contract entered into by him.

Mr. Ghose, however, in support of the decision of the Judge, has argued on the respective title of the parties. He contends that Sweetland had no power to sell or alienate the interest he acquired under the lease without the consent of Government; that it does not appear that the *ekrar* propounded by the plaintiff was at any time approved or sanctioned by that authority, whereas the *istafa* of Mr. Sweetland in favor of his client had been approved by the Collector.

This is a contention which was also never raised in the Court of first instance, and on which the plaintiff had no opportunity to adduce any evidence; but, irrespective of this objection, I do not see that this plea is sufficient to get rid of the title of the Rajah.

The clause in the lease of Sweetland is to the

effect simply, that he should not alienate or make away in gift the property leased to him or in his name to the Moran Coal Company; but there is no penalty attached to any infraction of this covenant. This would not prevent Sweetland from admitting a partner in the lease, he remaining responsible to Government for the entire rent. The Government interest is no way injured by Mr. Sweetland having allowed the Rajah to be his partner in the property. The whole estate would be liable to sale if the revenue was not paid for it.

I think Government had this clause inserted in the usual way without any particular object in view. But if there be any object, it is more with a view to prevent a new lessee of the whole estate being thrust upon the Government, by a sale of the entire interest under the lease by Sweetland to a stranger, than with any object to prevent the lessee from admitting a partner to assist him in the work of reclamation. It does not appear that the defendant holds under any independent title from the Collector, but he comes under a purchase from Sweetland, and surely it ill suits the defendant's mouth to say that because his predecessor had no power to admit any person as a partner in the lease without the sanction of the Collector, therefore he is entitled to set

at nought the acts of Sweetland. I think, whether Sweetland has exceeded his power or not, the defendants cannot raise that objection. It is not correct to say that Sweetland made an *istafa* to Government, and defendants got a settlement, but the *istafa* (or sale) was made in favor of the defendant by Sweetland, and the name of the defendant was only mutated or registered in lieu of Mr. Sweetland in the Collector's books.

The Rajah having obtained the *ekrar* from the Government lessee without any objection from the Collector, or any person on behalf of Government, we must take it for granted that Sweetland had power to execute it, and that it is not *ipso facto* void, but at most might have been avoided by the Collector, if he thought fit to take any action upon this clause in the lease. In the absence of any such action on the part of Government, I do not think that the defendants can raise that objection now, especially when they have failed to take it before the Division Bench which remanded the case. If there was any force in this objection, I think the respondents ought to have pressed it before the Judges, and asked them to send another issue on it to the lower Court.

I should think that the Division Bench, although

they have not distinctly decided this point in their written judgment, have virtually decided against it when they reversed the decision of the Judge; for the Judge had made it a point in defendant's favor, and had held that the plaintiff had no right because the *ekrar* had been executed without the consent and sanction of the Collector.

Under all these circumstances, I am of opinion that the decision of the Judge of Sylhet should be set aside, and the decree of the first Court should be restored and should stand in lieu of it.

O. C. MOOKERJEE.

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